

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

YELLOWCAKE, INC., a California  
corporation,

Plaintiff,

v.

MORENA MUSIC, INC., a California  
corporation; EDUARDO LEON, d/b/a  
LONG PLAY MUSIC; and Does 1 through  
50, inclusive,

Defendants.

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MORENA MUSIC, INC., a California  
corporation,

Counter Claimant,

v.

YELLOWCAKE, INC., a California  
Corporation; COLONIZE MEDIA, INC.;  
JOSE DAVID HERNANDEZ, an  
individual,

Counter Defendants.

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YELLOWCAKE, INC., a California  
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

No. 1:20-cv-00787-AWI-BAM

**ORDER GRANTING *EX PARTE*  
APPLICATION FOR LEAVE TO  
SUPPLEMENT INITIAL DISCLOSURES  
AND RESPONSES TO REQUESTS FOR  
PRODUCTION OF DOCUMENTS (Doc. 66)**

**ORDER REOPENING LIMITED DISCOVERY  
FOR NINETY DAYS AND VACATING ALL  
REMAINING SCHEDULING ORDER  
DEADLINES (Doc. 59)**

**ORDER SETTING STATUS CONFERENCE**

No. 1:20-cv-00988-AWI-BAM

**ORDER GRANTING *EX PARTE*  
APPLICATION FOR LEAVE TO  
SUPPLEMENT INITIAL DISCLOSURES AND  
RESPONSES TO REQUESTS FOR  
PRODUCTION OF DOCUMENTS (Doc. 55)**

1 HYPHY MUSIC, INC.,  
 2 Counter Claimant,  
 3 v.  
 4 YELLOWCAKE, INC.; COLONIZE  
 5 MEDIA, INC.; JOSE DAVID  
 6 HERNANDEZ; JESUS CHAVEZ, SR.,  
 7 Counter Defendants.

**ORDER REOPENING LIMITED DISCOVERY  
 FOR NINETY DAYS AND VACATING ALL  
 REMAINING SCHEDULING ORDER  
 DEADLINES (Doc. 50)**

**ORDER SETTING STATUS CONFERENCE**

8 Currently before the Court are the following: (1) Defendants/Counter Claimant's *Ex*  
 9 *Parte* Application for Leave to Supplement Initial Disclosures and Responses to Requests for  
 10 Production of Documents in the matter of *Yellowcake, Inc. v. Morena Music, Inc.*, ("Morena  
 11 *Music*"), 1:20-cv-00787-AWI-BAM (Doc. 66); and (1) Defendant/Counter Claimant's *Ex Parte*  
 12 Application for Leave to Supplement Initial Disclosures and Responses to Requests for  
 13 Production of Documents in the matter of *Yellowcake, Inc. v. Hyphy Music, Inc.*, ("Hyphy  
 14 *Music*"), 1:20-cv-00988-AWI-BAM (Doc. 55). Plaintiff/Counter Defendants (collectively  
 15 "Plaintiff") filed nearly identical responses in both matters requesting additional time to oppose  
 16 the *ex parte* application and a 60-day adjournment of all case deadlines. (*See Morena Music*,  
 17 Doc. 69; *Hyphy Music*, Doc. 57.) Defense counsel filed virtually identical replies in both actions.  
 18 (*See Morena Music*, Doc. 70; *Hyphy Music*, Doc. 58.) The Court finds the current briefing  
 19 adequate to address the applications. No additional briefing is necessary or required, nor will  
 20 additional briefing be permitted. Accordingly, Plaintiff's request for an extension of time to  
 21 oppose the applications is DENIED. The matter is deemed submitted on the record.

## 22 I. Background

23 Given the related nature of the actions and the nearly identical issues for consideration,  
 24 and in the interests of judicial economy and conservation of scarce judicial resources, the Court  
 25 summarizes the issues as they are presented in the *Hyphy* matter, unless otherwise noted.

### 26 *Hyphy Music*:

27 Defendant Hyphy Music, Inc. ("Hyphy") asserts that on October 5, 2022, it discovered  
 28 evidence – for the first time – proving its counterclaim for alleged infringement against Counter

1 Defendants Yellowcake, Inc., Colonize Media, Inc., Jose David Hernandez (principal of Plaintiff  
2 Yellowcake, Inc. and Colonize Media), and Jesus Chavez, Sr. (founder and principal of musical  
3 group *Los Originales De San Juan*) (collectively “Counter Defendants”) of certain *Los Originales*  
4 *De San Juan* album cover art owned by Hyphy. Hyphy also asserts that it has come into  
5 possession of copyright assignment agreements from two band members of *Los Originales De*  
6 *San Juan*., “which serve as critical evidence of [Counter Defendants’] lack of standing to sue  
7 Hyphy for copyright infringement of the [*Los Originales De San Juan*] Albums for which  
8 members were co-authors.” (Doc. 55 at 6.)

9 Hyphy alleges that throughout the discovery process, Counter Defendants have “stymied”  
10 Hyphy’s efforts to obtain evidence of Counter Defendants’ unauthorized upload of the *Los*  
11 *Originales* albums with Hyphy’s album artwork. (*Id.*) In particular, Hyphy alleges that Counter  
12 Defendants “scrubbed (what they believed was) all evidence of such use from the internet.” (*Id.*)  
13 Hyphy also alleges that Counter Defendant Hernandez, a co-owner of Yellowcake, Inc. and  
14 Colonize Media, “flat-out lied under oath” when asked in his deposition about whether Hyphy’s  
15 album artwork was originally uploaded with the *Los Originales* albums. (*Id.*)

16 By the *ex parte* application, Hyphy requests leave to supplement its Initial Disclosures  
17 with the identifies of the *Los Originales De San Juan* group member who assigned rights in the  
18 *Los Originales* albums to Hyphy, and to supplement their document production with copies of the  
19 assignment agreements and Hyphy’s recently discovered evidence of alleged infringement of the  
20 *Los Originales* album artwork. (*Id.*)

21 In its letter brief, Plaintiff objects that there was no need for an expedited motion, arguing  
22 Hyphy only filed the *ex parte* application because the dispositive motion deadline is October 24,  
23 2022. [This is only true for the *Morena Music* matter.] Nevertheless, Plaintiff reports that the  
24 parties met and conferred, and Plaintiff agreed to accept the late disclosures as timely, so long as  
25 it could take limited discovery concerning the newly disclosed documents, including deposing  
26 Hyphy’s principal, Jose Martinez, and the counterparties to the assignment agreements, *Los*  
27 *Originales De San Juan* band members, Domingo Torres Flores and Alfonso Vargas. (Doc. 57 at  
28 1-2.) Hyphy refused to stipulate to that agreement. Instead, Hyphy reportedly insisted on

1 reopening discovery “beyond the scope of the newly discovered documents, which is not even  
2 relief Defendant requested in its *ex parte* application.” (*Id.* at 2.) According to Plaintiff, Hyphy  
3 also refused to agree to additional time for Plaintiff to oppose the application or to reset the  
4 summary judgment cutoff date. Plaintiff requests a sixty-day adjournment of all case deadlines to  
5 address the parties’ dispute.

6 In reply, Hyphy claims that Plaintiff’s counsel is mischaracterizing the parties’ meet-and-  
7 confer discussions. Hyphy does not believe that unilateral additional discovery by Plaintiff is  
8 appropriate. Instead, Hyphy is willing to withdraw the *ex parte* application “if Counter-  
9 Defendants’ counsel will agree to a limited – but fair and mutual – reopening of the discovery  
10 period to allow all sides to address [Defendants’] newly discovered evidence.” (Doc. 58.)  
11 According to an email attached to the reply, Hyphy informed Plaintiff of its agreement that  
12 “stipulating to further, but limited, discovery on the issues supplemented is the better route to go”  
13 and it has the ability to produce the two band members who are parties to the assignment  
14 agreement (Flores and Vargas). However, Hyphy also would like to conduct further discovery on  
15 the recently discovered evidence of infringement. Hyphy identifies this discovery as: (1) the  
16 further deposition of Counter Defendant Jose David Hernandez on the issue of distribution of all  
17 relevant works and on Hyphy’s evidence of infringement; and (2) the deposition of Counter  
18 Defendant Jesus Chavez, Sr. in his individual capacity. (*Id.*)

19 *Morena Music:*

20 The *ex parte* application and related response and reply in *Morena Music* are nearly  
21 identical to those in *Hyphy Music*. By the application in *Morena Music*, Defendants Morena  
22 Music, Inc. (“Morena”) and Eduardo Leon (collectively “Defendants”) request leave to  
23 supplement their initial disclosures and document responses. (Doc. 66 at 2.) As in *Hyphy Music*,  
24 Defendants report that on October 5, 2022, they discovered evidence proving their counterclaim  
25 for alleged infringement of certain *Los Originales De San Juan* album cover artwork owned by  
26 Morena. (*Id.* at 6.) Defendants also have come into possession of copyright assignment  
27 agreements from two band members of *Los Originales De San Juan*, which reportedly serves as  
28 evidence of Counter Defendants’ “lack of standing to sue Defendants for copyright infringement

of [*Los Originales De San Juan*] Albums for which such members were co-authors.” (*Id.* at 7.) Defendants believe they must be allowed to supplement their initial disclosures with the identities of the *Los Originales De San Juan* band members who assigned rights in the relevant albums to Defendants, and to supplement their document production with copies of the assignment agreements and the recently discovered evidence of infringement of the album artwork. (*Id.*)

As in *Hyphy*, Plaintiff has indicted its willingness to accept Defendants’ late disclosures as timely, “so long as Plaintiff can take limited discovery concerning the newly disclosed documents, including deposing Defendants’ principal (Eduardo Leon) and the counterparties the agreements that were just disclosed (Domingo Torres Flores and Alfonso Vargas).” (Doc. 69 at 1-2.)

The primary difference in the posture of the cases is the Scheduling Conference Order deadlines, with the dispositive motion deadline in *Moreno Music* on October 24, 2022, and the dispositive motion deadline in *Hyphy Music* on November 15, 2022. The non-expert and expert discovery deadlines have passed, and discovery is closed.

## II. Discussion

### A. Legal Standard

Federal Rule of Civil Procedure 26(e) requires a party to supplement its initial disclosures or discovery responses “in a timely manner” when it learns that the disclosure or response is incomplete or incorrect and the information has not otherwise been made known to the opposing party. Fed. R. Civ. P. 26(e)(1)(A). Failure to comply with the duty to supplement under Rule 26(e) can result in the exclusion of evidence unless the failure to supplement was substantially justified or harmless. Fed. R. Civ. P. 37(c).

“Whether supplementation is timely under Rule 26(e) hinges on facts such as when the original disclosure was made, when a party discovered its response was incomplete, when the supplementation was made in relation to those events.” *Persian Gulf Inc. v. BP W. Coast Prod. LLC*, No. 15cv1749-JO-AGS, 2022 WL 4830698, at \*10 (S.D. Cal. Sept. 30, 2022). The Advisory Committee Notes to the 1993 Amendments suggest that the obligation to supplement under Rule 26(e) does not end with the fact discovery cutoff, and provides that supplementations

1 “should be made at appropriate intervals during the discovery period, and with special  
2 promptness as the trial date approaches.” Case law confirms that “there is no doubt that the duty  
3 to supplement under Rule 26(e) extends beyond the discovery cutoff date.” *LD v. United Behav.*  
4 *Health*, No. 20-cv-02254-YGR (JCS), 2022 WL 4372075, at \*6 (N.D. Cal. Sept. 21, 2022);  
5 *Woods v. Google, Inc.*, No. C11-01263-EJD (HRL), 2014 WL 1321007, at \*4 (N.D. Cal. Mar. 28,  
6 2014) (“The Court can definitively state that the Rule 26(e) duty to supplement or correct  
7 incomplete or incorrect responses does, in fact, extend beyond the discovery cutoff date.”).

### 8 **B. Analysis**

9 There is no apparent dispute that Defendants’ duty to supplement extends beyond the  
10 discovery cutoff. The most relevant circumstances to the question of whether the  
11 supplementation is timely includes when Defendants discovered their responses were incomplete,  
12 when the supplementation was made in relation to those events, and whether supplementation  
13 was delayed due to factors beyond Defendants’ control. Here, Defendants only discovered the  
14 alleged infringement of the album artwork on October 5, 2022, they promptly attempted to  
15 supplement their discovery responses, including by filing the instant *ex parte* applications on  
16 October 12, 2022, and they have suggested that discovery of the relevant evidence may have been  
17 delayed due to factors beyond their control. Considering these circumstances, Defendants should  
18 be permitted to supplement their document production with evidence of the alleged infringement  
19 of the album artwork, and that supplementation be deemed timely under Rule 26.

20 The Court notes, however, that Defendants have not explained the delay in obtaining the  
21 copyright assignment agreements, or why those agreements could not have been discovered prior  
22 to the non-expert discovery cutoff. Nevertheless, by way of its initial response, Plaintiff does not  
23 appear to object to the late disclosures or production as untimely, so long as Plaintiff is permitted  
24 to take limited discovery concerning the newly disclosed documents, including, but not limited to,  
25 the depositions of the *Los Originales* band members, Domingo Torres Flores and Alfonso  
26 Vargas, the counterparties the assignment agreements.

27 As best as can be determined by the Court, the dispute presented here is not whether  
28 Defendants should be permitted to supplement their initial disclosures and their document

1 production, and whether said supplementation should be deemed timely to avoid the sanctions of  
2 Rule 37. Nor is the dispute whether Plaintiff should be permitted to conduct additional, limited  
3 discovery concerning the newly disclosed documents. Indeed, Defendants have not objected to  
4 additional, limited discovery. Rather, the dispute wholly centers on whether Defendants also  
5 should be permitted to engage in certain, limited discovery.

6 Absent a fundamental disagreement regarding the duty to supplement, the Court will grant  
7 the relief requested by the *ex parte* applications and allow Defendants in their respective cases  
8 leave to supplement their initial disclosures with the identities of the *Los Originales* band  
9 members who assigned rights in certain albums to Defendants and to supplement their document  
10 production with copies of the assignment agreements and the evidence of alleged infringement of  
11 the album artwork. This supplementation shall be deemed timely under Rule 26(e).

12 Further, the Court finds good cause to reopen discovery for a period of ninety (90) days  
13 for the limited purpose of allowing the parties to conduct discovery on the newly discovered  
14 evidence: the assignment agreements and the alleged evidence of album artwork infringement.  
15 Discovery is not reopened for all purposes. For *Hyphy Music*, Plaintiff shall be permitted to  
16 depose Hyphy's principal, Jose Martinez, and the parties to the assignment agreements, *Los*  
17 *Originales* band members Domingo Torres Flores and Afonso Vargas. Hyphy shall be permitted  
18 to depose Counter Defendants Jose David Hernandez and Jesus Chavez, Sr. Additionally, for  
19 purposes of *Morena Music*, Plaintiff shall be permitted to depose Defendants' principal, Eduardo  
20 Leon, and the parties to the assignment agreements, Domingo Torres Flores and Afonso Vargas.  
21 Defendants Moreno and Leon will be permitted depose Jose David Hernandez and Jesus Chavez,  
22 Sr. Deposition of each individual may not exceed a total of three (3) hours, regardless of whether  
23 that individual is being deposed for purposes of Hyphy Music or Morena Music, or both. The  
24 scope of these depositions may not exceed discovery beyond the newly discovered evidence.

25 To accommodate the limited reopening of discovery, the Court will vacate all Scheduling  
26 Order deadlines, including the relevant dispositive motion deadlines. The Court also will set a  
27 status conference at the conclusion of the limited discovery period to reschedule the dispositive  
28 motion deadlines, and pretrial conference and trial dates for both actions. The Court notes that



1 while it is permitting a narrow reopening of discovery in this situation, newly discovered  
2 evidence in the future will not warrant the same treatment. The Court forecloses the potential  
3 slippery slope of further newly discovered evidence warranting additional discovery. Indeed, the  
4 Court anticipates that new evidence will be uncovered in the limited depositions authorized  
5 herein. Nonetheless, discovery is not permitted beyond the scope outlined in this Order.

6 **III. Conclusion and Order**

7 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 8 1. The *ex parte* application filed by Defendants/Counter Claimant Morena Music, Inc.  
9 and Eduardo Leon in *Yellowcake, Inc. v. Morena Music, Inc.*, 1:20-cv-00787-AWI-  
10 BAM (Doc. 66) and the *ex parte* application filed by Defendant/Counter Claimant  
11 Hyphy Music, Inc. in *Yellowcake, Inc. v. Hyphy Music, Inc.*, 1:20-cv-00988-AWI-  
12 BAM (Doc. 55) for leave to supplement their Initial Disclosures and Responses to  
13 Requests Production of Documents are GRANTED.
- 14 2. Discovery in both actions is reopened for ninety (90) days from the date of this Order  
15 for the limited purpose of allowing the parties to conduct discovery on the newly  
16 discovered evidence: the assignment agreements and the alleged evidence of album  
17 artwork infringement. Depositions of any individual may not exceed a total of three  
18 (3) hours, regardless of whether that individual is being deposed for purposes of one or  
19 both of the actions. No other discovery is permitted.
- 20 3. The Scheduling Order (Doc. 59) deadlines in *Yellowcake, Inc. v. Morena Music, Inc.*,  
21 1:20-cv-00787-AWI-BAM, including the dispositive motion filing deadline, pretrial  
22 conference and jury trial are VACATED.
- 23 4. The Scheduling Order (Doc. 50) deadlines in *Yellowcake, Inc. v. Hyphy Music, Inc.*,  
24 1:20-cv-00988-AWI-BAM, including the dispositive motion filing deadline, pretrial  
25 conference and jury trial are VACATED.

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1           5. A STATUS CONFERENCE is set in both matters on **February 1, 2023, at 9:30 AM**  
2           **in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe.**

3  
4 IT IS SO ORDERED.

5 Dated: **October 20, 2022**

/s/ *Barbara A. McAuliffe*  
6 UNITED STATES MAGISTRATE JUDGE  
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